QUESTION 1 - Sample Answer # 1

1. Is Becky's will enforceable?

In Georgia, a will must be in writing and authenticated (signed, initialed, otherwise marked to indicate assent) by the testator and two witnesses. The witnesses must either see the testator sign the will (within the witness's "line of sight") or the testator must attest to the witnesses that the signature on the will is the testator's. The witnesses need not sign in each other's presence. A testator must be at least 14 years old at the time the will is executed and must have the basic capacity to form testamentary intent, to understand the basic terms of the will, and to remember/know about the property at issue.

All pieces of paper contemporaneously created will be considered part of the will. The signatures/authentications need only be on one page of the will and need not be in any specific spot. If a witness is also a beneficiary under the will, it will still be valid, but that beneficiary will not take under the will and he will be treated as if he predeceased the testator for purposes of the gift to that beneficiary. A will need not contain any magic words or have any specific form, but it must indicate testamentary intent. Oral wills are not enforceable in Georgia.

Here, Becky's will is not enforceable for the obvious reason that it was not signed by two witnesses. There is only one signing witness on each will - Becky's assistant. Perhaps one could argue that the two separate documents (Becky's will and Andy's will) were created at the same time with the intent to complement each other and therefore this is actually one big will, so maybe Becky's signature serves as the second witness signature on Andy's will and vice versa. This argument would fail because wills are interpreted based on the plain terms (with the help of extrinsic evidence if there is an ambiguity). Here, presumably, there is no ambiguity - each separate document states that it is the will of either Becky or Andy, only, and the only person to sign with any indication that she was signing in the capacity of a witness was Becky's assistant. Therefore, Becky's will is unenforceable for lack of a second witness.

2. Who has a rightful claim to Becky's estate?

When a decedent does not leave a valid will, Georgia's intestacy statute steps in to determine what happens to the decedent's property. The decedent's actual intent is irrelevant and the intestacy statute will be strictly applied, even if there is some evidence indicating what the decedent might have wanted for her property (like, in this case, an invalid will). Under the intestacy statute, property first goes to the decedent's surviving spouse (currently married at death) and/or surviving issue, if any exist. If both a surviving spouse and children exist, they take equally. If only one exists, the spouse would take all or the children would take all by representation. After that, the priority order for heirs is the decedent's parents, then the decedent's siblings (and their issue), then the decedent's grandparents, then the decedent's aunts and uncles (and their issue). In-laws and step-parents or step-children (unless adopted) are not heirs under Georgia's intestacy statute.

While a parent who has abandoned their child may not inherit from that child, the fact that a decedent was estranged from an heir does not bar the heir from taking under the intestacy statute. If there are no surviving heirs, then the estate will escheat to the state.

When an heir or beneficiary wrongfully causes the decedent's death, that person may not take under the intestacy statute. This rule applies in the case of murder or voluntary manslaughter but not involuntary manslaughter.

The Boys and Girls Club has no rightful claim to Becky's estate. Although it is pretty clear that Becky intended for her estate to go to the Club in the event that Andy could not take, that directive was written in the invalid will. The intestacy statute applies and the decedent's intent does not matter. The Club is not an heir under the statute and therefore has no claim.

Andy would normally be entitled to all of Becky's estate because he is the surviving spouse and he and Becky were married at the time of her death, and also Becky has no issue. However, Andy murdered Becky. This means that he may not inherit from her under the intestacy statute. We proceed as though Andy had predeceased Becky.

Kate will take all of Becky's estate and Charlie will take nothing. Becky had no surviving spouse who could take when she died, nor did she have issue, nor parents. The next level of heir who can inherit is siblings. Kate is Becky's only sibling and their estrangement is irrelevant; Kate is entitled to the estate. Charlie, as Becky's in-law, is not considered an heir under the intestacy statute. Therefore, Charlie inherits nothing.

3. To whom should the life insurance proceeds be distributed?

The life insurance proceeds are, initially, non-probate property because their distribution will occur based on the terms of the life insurance contract rather than the intestacy statute or a valid will. Normally Andy would be entitled to the proceeds of the policy since he is the policy's named beneficiary. However, the policy likely has a provision barring a beneficiary from collecting insurance proceeds after murdering the insured. In that case, the terms of the policy would control to determine where the proceeds would go. It is possible that, because there is no beneficiary, proceeds would go to Becky's estate, and thus, Katie would eventually receive them.

4. Who gets the lake house?

Andy and Becky owned the lake house as tenants in common. A tenancy in common exists when two different people own real property, each with equal right to possess the whole. A tenancy in common can be based on equal ownership interest or some other % interest for each tenant in common. An interest in a tenancy in common is freely alienable, devisable, and descendible. Each tenant may only convey the interest that they possess. There is no right of survivorship for tenants in common, unlike in a joint tenancy with right of survivorship. Here without other facts, and given that they purchased the property together while married, I assume Andy and Becky own equal shares of the property. Essentially, Andy has a 50% interest in the property and Becky had a 50% interest in the property. Thus, Becky's half of the tenancy in common will go to her estate, meaning it will go to Kate, while Andy retains his 50% tenancy in the property as well. Kate or Andy could initiate an action to sever the tenancy in common, in which case a court would likely sell the property (because a lake house can't be split into two equal parts) and split the money between Kate and Andy.

QUESTION 1 - Sample Answer # 2

1. Becky's will is not enforceable. In Georgia, a will must abide by the Wills statute in order to be successfully probated. According to the statute, a will must be: (1) in writing, (2) signed by at least two witnesses in the testator's presence, and (3) signed by the testator in each of the witness' presence. The testator must have the intent to create a will. Further, a testator must have the capacity, or be of sound mind, to create a will, which means the testator must know of the nature of their property and to whom their bounty would go to. Additionally, Georgia does not require that the testator sign the will in front both of the witnesses together, but rather in each of their presence individually is allowed under the statute. The testator also need not physically sign in their presence, but can acknowledge to the witnesses in their presence that the signature is his. "Presence" in Georgia does not require actual line of site to the witnesses or testator, but there must have been the physical capability to see the testator or witness sign should the person attempt to look. Thus, the witness could not be in another room and "know" that the testator is in the other room signing the will. They must have access to an unobstructed view of the signing testator (and the testator of the witnesses).

At issue here is the witness requirement. As stated above, a valid will must be signed by two witnesses in the testator's presence. Here, Becky's will was only signed by one witness. Thus, her will does not abide by the Wills statute and is invalid. It could be claimed that, notwithstanding the lack of more than one witness, Becky's will could qualify as a holographic will. Typically, a holographic will is a will that is in the handwriting of the testator and signed by the testator, and excuses the requirement for witnesses. In some jurisdictions, even a preprinted form like the one in our facts can qualify as a holographic will so long as material portions are filled in with the testator's handwriting and is signed by the testator. In Georgia, however, there is no recognition of holographic wills as stated in those jurisdictions. Instead, Georgia still requires the signature of two witnesses for any will to be valid. This requirement effectively dispenses with the holographic will exception found in many states. So, because the Will was only signed by one witness, the Will is invalid under the Georgia Wills Statute.

2. Kate has the rightful claim to Becky's estate. At issue here is who takes Becky's estate since her will is invalid and unenforceable. When a person dies intestate, meaning without a will, her estate passes through intestacy. In Georgia, if someone dies intestate the normal person to take next would be that person's spouse. If they had no spouse, then their issue. If they left behind no issue, then it would be their parents, descendants of their parents, grandparents, and descendants of their grandparents.

Andy, as Becky's spouse, would normally take Becky's entire estate in intestacy. In our particular case, though, Andy does not take Becky's estate under intestacy. At issue is whether Andy is barred from taking from Becky's estate because of his conduct at the lake house. In Georgia, one who unlawfully and intentionally kills another is barred from benefitting from their victim's estate. This rule is typically called a slayer statute. A finding that someone falls under the slayer statute only requires clear and convincing evidence of the unlawful and intentional killing, instead of the much higher beyond a reasonable doubt standard in criminal law. Here, there was video surveillance evidence of Andy hitting Becky over the head with a wine bottle so hard that she fell in lake and died. This alone should be enough evidence to sustain the clear and convincing evidence burden that Andy

intentionally killed Becky and label Andy a slayer. More so, he was criminally convicted of murder. While not conclusive, it creates an rebuttable presumption that Andy is in fact a slayer.

So, without an eligible spouse, no children between the two of them (issue), and no parents surviving Becky, the estate would pass to Becky's parents' descendants. This would mean Becky's siblings. The facts tell us Becky is survived only by her sister Kate. Even though she is estranged from her sister Kate, Kate is eligible to take the estate in its entirety under the Georgia intestacy statute.

The Charity has no standing to take the estate, even though Andy would be seen to "predecease" Becky as a slayer, because the Will was invalid. Thus, Becky's provision passing her estate to the charity if Andy predeceases her is given no effect.

3. The proceeds of Becky's life insurance should be distributed to her "estate," which is in intestacy, and thus will pass to Kate as discussed above. Georgia's slayer statute applies to life insurance policies and joint tenancies with the right of survivorship, on top of Will beneficiaries. So, since Andy should be found with clear and convincing evidence to have intentionally and unlawfully killed Becky, he should be barred by the Slayer statute from taking from her life insurance policy. The policy will fall to Becky's estate, and Kate will take.

4. Tenancy in common is a form of property co-ownership recognized in Georgia whereby the tenants each share equal, undivided interests in the property each with the right to possess the whole. Here, Becky and Andy were tenants in common with respect to the Lake House. Thus, each of them had a ½ half undivided interest in the property and the right to possess the whole. It is important to note that Georgia does not recognize Tenancy by the entirety which might be found in other jurisdictions since the property was acquired together as a married couple.

A tenant in common's property interest in property is fully alienable and devisable. Thus, in contrast to a joint tenancy with the right of survivorship whereby a joint tenants interest is not devisable because her interest in the property ceases the moment she dies, the other Tenant's in common have no interest in the other tenant's interest. So, Becky's interest, once she dies, would pass according to any valid instrument she had devising or transferring the property or would pass through intestacy in the absence of such document. For the reasons above discussing the invalidity of the Will and the inability of Andy to take Becky's estate, Becky's undivided ½ interest in the lake house would pass to her sister Kate. Nothing happens to Andy's share because he has an interest in the property completely separate from Becky's and thus not subject to any slayer rules.

QUESTION 1 - Sample Answer # 3

1. Becky's Will is not enforceable as there was only one witness.

A will is an instrument that is used to pass property after death. A will is valid in Georgia if it is in writing, signed by a testator with capacity, and has two ascribing witnesses.
Capacity requires that the testator be over the age of 14 and have a sound mind - that is, to be able to come up with a strategic devise and understand their assets. The signature

may include any mark from the testator that shows the intent to sign and create a will. The witnesses must either see the testator sign or must have the signature acknowledged to them by the testator. The witnesses then must sign in the line of sight of the testator, that is to say, the testator must be in the same room at the same time to be able to witness the witnesses sign the will. A Will that is lacking one of these elements will be invalid under Georgia law. If a will is invalid or if no Will is in place at all, the probate court will follow Georgia's intestacy statute. Intestacy governs the devise of probate property after death when no other instrument controls.

Here, there is not a valid Will in place and the intestacy statute will control the devise of her property. The Will is in writing, as they used a will form found online. The Will was signed by Becky, the testator, with no facts to indicate that she was not of sound mind. We also can assume she is over the age of 14 as she had the capacity to get married, which requires you to be at least 16 with parental consent or 18 without (regardless, no marriage under 16). There was, however, only one ascribing witness to the Will. Becky's assistant signed on the "single witness signature line," and no other witnesses or signatures were obtained. There was, therefore, not two witnesses as required under Georgia law. The Will will fail and the property must pass according to intestacy statutes.

2. Kate will take the estate pursuant to intestacy laws.

Since the will was invalid as explained below, Becky's property will pass through probate pursuant to intestacy laws. Intestacy laws prevail when there is no will or no valid will. The intestacy statute gives priority to the closest living family member, in the following priority: spouse, descendants, parents, siblings, grandparents, aunt/uncle, then escheat to the state. The closest living members in a single category will take per stirpes. The facts indicate that Becky's sole living relative is her sister Kate. As her parents are not living and there are no descendants, her sister Kate is next to take according to the intestacy statutes. It does not matter that she is estranged from her sister, the intestacy statute will not take this into consideration. Becky had the choice of not leaving her property to her sister through intestacy, and she could have done so by creating a valid will. She, however, did not. Therefore, by dying intestate, her sister Kate will take.

Andy is not a candidate to take through intestacy. A slayer statute provides that if a person feloniously or maliciously kills another, they may not benefit from such killing by taking property through probate or will substitute. The slayer statute treats the murderer as though they had predeceased the testator or the decedent. Here, Andy feloniously killed Becky by hitting her over the head with a wine bottle. He was arrested of felony murder, likely connected to the crime of aggravated assault with a deadly weapon. If committed with malice, it is a basis for felony murder in Georgia, along with burglary, arson, rape, robbery and kidnaping. When Andy killed Becky, he lost his ability to take under the slayer statute and is treated as predeceased - therefore, Becky's closest living relative is her sister, Kate.

The estate consists of probate property that does not pass outside of probate via a will substitute (see below). All of Becky's assets consist of her interest in the penthouse, her interest in the lake house (see below), and her separate bank account. The bank account could possibly pass outside of probate if there was a payable on death beneficiary named, however, that information is not given so we assume otherwise. This property in her estate would all pass to Kate via intestacy.

The Boys and Girls Club does not have a valid claim as the Will was not valid (otherwise they would take due to the slayer statute). Charlie has no claim as he is not related to the deceased. Even though Andy is treated as having predeceased Becky, Charlie would not be able to take a lapsed gift - only descendants would - and there were no children.

3. The life insurance should pass to Kate.

Life insurance policies are will substitutes. Will substitutes are legal instruments that control a devise prior to that property reaching probate (non-probate property). The most common types of will substitutes are payable on death account or life insurance policies. Life insurance policies pass to the beneficiary named on the form. There is an exception to taking under the slayer statute. When a person feloniously or with malice kills another individual, they cannot then take benefit from the decedent's estate. The property will lapse and fall into the estate residuary. Here, Andy killed Becky feloniously, as he was arrested for felony murder and by a preponderance of the evidence, even without conviction, it can be shown that he feloniously hit her over the head with a wine bottle and killed her.

Therefore, Andy cannot take even though he was the named beneficiary. Since Andy cannot take under the slayer statute, the insurance will go to the estate, which as shown above, Kate will take through intestacy.

4. Kate will take Becky's interest in the house.

There are two concurrent estates in Georgia: tenants in common and joint tenancy. Georgia does not recognize tenancy by the entirety. Tenants in common have an undivided right to possess the whole lot of the land. Joint tenants have to be express and must contain language that there is a right of survivorship. Further, there must be a taking the property in the same title, time, interest, and possession. A tenant in common is free to transfer, devise, or otherwise gift their interest in property without the consent of the other. Further, as there is no survivorship language to make it a joint tenancy, there is a default of no survivorship interest. Upon Kate's death, and under her invalid will, her interest in the property would pass to her sister Kate. Andy would not lose his interest, however, just because he committed a crime. He would still be able to have a stake in it as a tenant in common with Kate. Upon Andy's conviction, Kate may want to file for a partition of the land. Partition is a unilateral right of a tenant in common to either sell the land and split the proceeds, or split the land in kind. Partition in kind is preferable if feasible (however probably not feasible here since only one house on the lake). This would allow Kate to own either a smaller portion of the house in fee simple, or more likely to collect from the land and not be tied to a parcel with Andy.

QUESTION 2 - Sample Answer # 1

1. Suzie will likely succeed on her defamation claim because she can satisfy the common law and constitutional elements, and Tracy does not have a good defense. At issue are the elements of a defamation claim under Georgia law and the Constitution. A person is liable for defamation if the following common law elements are proven: (1) D made a defamatory statement; (2) of and concerning the plaintiff; (3) publication; (4) damages. The requirements for damages vary depending on whether the statement was slander or libel.

Slander is an oral statement, while libel is written, which includes radio and television broadcasts. For slander, damages are presumed if the statement is slander per se, which requires the statement: (1) impugn the plaintiff's professional or business reputation, (2) attribute a contagious disease, or (3) attribute to them a crime involving moral turpitude. Georgia does recognize as slander per se statements claiming a woman is unchaste. If the statement is libel, damages are presumed if is libel per quod, meaning the statement was in a newspaper or magazine or meets one of the elements described above. If the statement is not libel per quod or slander per se, the plaintiff must show actual damages, which may include harm to reputation and other pecuniary losses.

In addition to the common law requirements, the Constitution, applicable to the states via the 14th amendment, requires a higher showing if the declarant's first amendment rights are implicated. The first amendment is implicated if the statement involves a public figure and/or is on a matter of public concern. When implicated, the constitution requires the plaintiff prove two additional elements: (1) that the statement is false, and (2) that the defendant is at fault. If the statement is about a private figure but on a matter of public concern, the plaintiff must show falsity and that the defendant was at least negligent, in addition to actual damages. If the plaintiff is a public figure and the statement is on a matter of public concern, the plaintiff must show falsity and malice. The speaker acted with malice if they knew the statement was false or acted with reckless disregard as to its truth.

Still, even if the plaintiff can prove all of the above elements, the defendant can defend against the defamation claim by alleging she had a privilege or there was consent. Consent is when the plaintiff gives the declarant permission to make the statement. Also, the defendant may have an absolute or qualified privilege. There is an absolute privilege for statements made in a judicial proceeding, statements by legislators in their official capacity, and statements made under oath in other proceedings. There is a qualified privilege if the speaker had an interest to protect or the statement was in the audience's interest. A plaintiff can defeat a defendant's showing of qualified privilege by showing they exceeded the scope of the privilege or acted with actual malice.

Here, Suzie can likely succeed on her defamation claim. The statement is defamatory because it reflects poorly on Suzie's character and reputation - it shows her scantily clad lying on a floor, and the comment to the photo states that Suzie was passed out from drinking too much alcohol. Suzie can show that the statement is of and concerning her based both on the photo itself and the comment by Tracy, which used Suzie's name and referred to her as being a member of Tracy's college class. Thus, a person seeing this statement and photo would understand that it was about Suzie. Publication is met because Tracy published the photo and comment on her Social Media homepage, which distributed the photo and statement to hundreds of other individuals. Suzie probably does not need to prove any damages because the statement is slander per se. The statement probably does not qualify as libel because it is not in a newspaper or magazine, but the court may consider that social media reaches widespread audiences as well, so it is an argument worth making. Still, Suzie has a good argument for slander per se. Tracy refers to Suzie as being a finalist for teaching position at Middletown Academy, which, along with the photo, suggests that Suzie was not fit to be a teacher, which is Suzie's profession. Moreover, Suzie was denied the teaching position, so she suffered actual damages due to Tracy's conduct.

Suzie will likely have to show Tracy acted with fault of at least negligence and that the statement was false because the matter may involve a public concern, but she can meet those requirements. Although Suzie is not a public figure, the public appears to be concerned with the quality and character of teachers educating their children, as evidenced by Bob's decision to re-share the post and express his anger. Although it may be a concern to the public of that community, it is likely that a court would find Tracy's first amendment rights implicated. Still, Suzie can make both these showings. First, the statement is false. Tracy remembers that Suzie studied hard in college and commuted to school - she would sometimes sleep in her friend's dorm rooms if it she stayed too late studying and was too tired to go home. Additionally, Suzie never drank in college, and Tracy knew that. Thus, the statement is false. Second, Tracy was more than negligent in publishing the statement - she acted with actual malice. Tracey knew that Suzie never drank, yet she published the statement knowing it was false, which qualifies as actual malice under the Supreme Court's constitutional precedent. Accordingly, Suzie has a strong case for defamation because she can satisfy the prima facie elements arising out of both common law and the constitution.

Not only does Suzie have a strong claim, but Tracy does not have good defenses. There was clearly no consent, but Tracey may argue she had a qualified privilege based on (1) her interest in the job, and (2) the community's interest in qualified educators. While Tracy may have an interest because she was also a finalist for the teaching position, that does not justify defamation - her conduct was wrongful. Second, even if the community was interested, which Bob's posting suggests is the case, Tracy exceeded the scope of any privilege by publishing the statement on Social Media to 984 persons. This was not limited to Middletown Academy board members - it included Suzie's "acquaintances," many of whom may not live in or have children educated at Middletown.

Ultimately, Suzie has a strong claim against Tracy, as she can satisfy the common law and constitutional defamation elements, and Tracy does not have a good defense. Moreover, while Suzie is not suing Bob, she could, as a republisher of defamation is held to the same standards of liability as the initial publisher.

2. Suzie has other claims against Tracy based on the Social Media posting, including: (1) intentional or negligent infliction of emotional distress; (2) intentional interference with business relations; and (3) false light or other privacy torts.

Tracy may be liable for intentional and/or negligent infliction of emotional distress. Intentional infliction of emotional distress occurs when a party, intentionally or recklessly, engages in extreme and outrageous conduct that causes another extreme emotional distress. Conduct is extreme and outrageous when it exceeds all bounds of human decency. Emotional distress involves mental anguish and other emotional damages - the plaintiff need not show a physical injury. Here, Tracy's social media posting may be extreme and outrageous because it shows Suzie scantily dressed, accuses her of being a drunk, and was shared with thousands of individuals. Tracy was at least reckless as to the distress this could cause Suzie. While it is unclear whether Suzie suffered any emotional distress, she would have a viable claim if she does. But even if Suzie cannot show Tracy was reckless, she was at least negligent. While this requires a showing of actual damages, Suzie was more qualified and likely would have been hired but for Tracy - lost income.

Tracy may also be liable for intentional interference with business relations - (1) P's contract or expectancy, (2) D interferes. Like a qualified privilege, Tracy will claim she had an interest to protect, but even so, the conduct undertaken to protect it was not within normal commercial bounds or standards.

Tracy is also probably liable for false light invasion of privacy. That tort occurs where a party attributes to the plaintiff a view or action they do not hold or did not take and it is offensive to a reasonable person. Here, Suzie does not drink, and a reasonable person would be offended both at being accused of being a drunk and having a photo of this nature shared. Also, Tracy knew this was not true - she acted with malice. Tracy may also be liable for intrusion upon seclusion for taking the photo of Suzie sleeping - there is some expectation of privacy when asleep.

QUESTION 2 - Sample Answer # 2

1. The issue is whether Suzie will succeed in a defamation suit against Tracy. In order to have a claim for defamation, the plaintiff must prove that the defendant made a defamatory statement relating to the plaintiff that was published or shared with a third party that caused the plaintiff damages. Damages occur when the individuals reputation is harmed due to the defamatory statement. Additionally, when the individual is a public figure, fraud and falsity of the claims must be proven. In order to recover, actual malice needs to be shown when the individual is not a public figure. When the individual is a public figure, damages are presumed therefore only a showing of negligence is required. In both cases, punitive damages are not available here because they are the essence of the claim. Further, there are two types of defamation: slander and libel. Slander is spoken and requires proof of specific damages. Where as libel is published and only requires the showing of general damages in order to recover. Here, the posting of the photo on Social Media platform would constitute libel.

Additionally, Tracy's statement arguably defamatory. While she does not outright claim that Suzie is a drunk or that she should not teach children like Bob did, Tracy's statement implies as much. Further, the statement is clearly directed as Suzie as she is named in the caption, Tracy identifies that is was Suzie from State University where collage kids tend to drink heavily further supporting the statement's implication, and Suzie is identifiable in the picture. Additionally, sharing the picture on a social media platform where Suzie has 984 friends in a manner that makes it "easily seen" clearly meets the publication requirement. It will not make a difference if Tracy argues that only those she has granted access to can see it for it to meet the publication requirement. Lastly, the defamatory statement absolutely harmed Suzie's reputation as she was not offered the job as an elementary teacher because of the statement. Tracy will likely argue that Suzie was not harmed because she was merely being considered for the position and that Tracy would have ultimately won the job regardless. However, as the facts state, this is likely not the case because Suzie was a more qualified candidate than Tracy. Also, Tracy and Bob's post were seen by most of the residents of Middletown. Therefore, it is also unlikely that Suzie will be considered for any future teaching positions as well. Further, because Suzie is not a public official or public figure, the express malice needing to be shown in order to recovery can be easily proven.

The facts show that Tracy published a knowingly false statement in order to disqualify Suzie for the job that Tracy sought. As stated in the facts, Tracy knew that Suzie never drank alcohol and that the photograph was misleading.

Therefore, Suzie likely has a successful claim against Tracy for defamation.

2. At issue here is what other claims may Suzie be able to bring against Tracy.

Intentional Infliction of Emotional Distress: Suzie will likely have a claim against Tracy under the intentional tort cause of action intentional infliction of emotional distress (IIED). While this is often a last resort tort claim, it is granted with the tortfeasor's intentional conduct is so extreme and so outrageous that is causes the plaintiff severe emotional distress. Under the facts of this case, purposefully published a photo that portrays a college peer in a false light to over 900 people in order to secure a job is likely to be considered outrageous. Further, Suzie was likely have suffered extremely emotional distressed due to its being posted. Not only did she lose her opportunity for a job but she was also labeled a drunk and unfit to teach children. Therefore, Tracy committed IIED by posting of the photo which then caused a foreseeable and severe emotion distress.

Invasion of Privacy - False Light : Suzie can likely also have a claim against Tracy for invasion of privacy. Here, Tracy took a picture of Suzie without her consent that paints Suzie in a false light while she was within the comforts of what she was using as a home. As the facts state, Suzie had been using her classmate's dorm room to sleep while she was attending school. Therefore, she was not out in the public such as a street corner when the picture was taken. Additionally, while not a deciding factor, she had no knowledge of the photograph and clearly did not consent to it being taken. Further, Tracy purposefully took that photo to paint Suzie in a false light so that it may later be used to her advantage. Therefore, Suzie would have a claim against Tracy for invasion of privacy.

Interference with a Business Transaction: If Susie can be considered an independent contractor as a teacher and the school as a employer or business entity, then she will likely have a claim for interference with a business transaction. Here, Tracy knowing interfered and successfully disrupted any potential transaction between the school and Susie.

Vicarious Liability for Bob's Statement: Although it is unlikely to be a successful argument, if Suzie can somehow prove that Bob was acting as an agent of Tracy then Tracy may be held vicariously liable for Bob's conduct. In order to be held vicariously liable, Suzie must prove that Tracy's statement of "Share this with everyone" was an instruction by Tracy for Bob to share it.

QUESTION 2 - Sample Answer # 3

1. Suzie will likely win her claim of defamation against Tracy.

The issue is whether Suzie can sue Tracy for defamation, particularly whether Bob's "share" of Tracy's post was foreseeable enough to be determined Tracey's post.
Defamation occurs when one says a defamatory statement regarding another that is damaging to the other's reputation and publishes it to a third party. To prove defamation, Suzie will have to show that Tracy said a defamatory statement. Here, the defamatory statement would be the picture along with the caption insinuating that Suzie is an irresponsible drunk. If the insinuation is not enough, the republication of Bob stating that Suzie is a drunk is most definitely a defamatory statement that harms her reputation.

Next, Suzie will have to prove that Tracey's statement was regarding Suzie. This will not be hard since Tracy posted the picture of Suzie and said Suzie's name in the caption.
Further, Suzie will have to show that Tracy published the claim to a third party. Since Tracy shared the picture on her social media page, she in essence published the picture to all of her social media "pals." Therefore, the requisite third party publication is satisfied.

Further, Suzie will have to prove causation and damages. To prove causation Suzie will have to prove cause in fact and proximate cause. Cause in fact exists when a "but for" cause has occurred. Here, that means that cause in fact would exist if Tracey's post was a but for cause of the injury (losing the job). Suzie will argue that had Tracy not posted the picture, Bob could not have shared it because it would not have existed, and no one would have seen it. Thus, Tracy's post is a but for cause of Suzie's injury. Further, Suzie must prove proximate cause. Proximate cause is all about foreseeability. This means that any intervening causes cannot have been superseding, which would break the causal connection. Tracy will argue that Bob's post was not foreseeable because she had no idea he would have shared it and posted the caption he did. Suzie will argue that when sharing a post on social media, you are publishing the post to all of your pals. It is very foreseeable that a pal will share it to their pals, writing their own caption on it. Here, Bob shared the post because he was concerned, which was the purpose behind the original post. Since Tracy insinuated in the picture and caption that Suzie was a drunk and an untrustworthy person, it was also foreseeable that Bob would write a caption that spelled out those insinuations. Suzie can prove causation since she did not get the job because the Middletown Academy board members saw the posts and determined she was not a fit candidate (even though she was more qualified than Tracy).

Further, Suzie must prove damages that were caused by the injury. In a defamation action, damages are presumed when dealing with libel per se. Damages are presumed when the defamatory statement jeopardizes the plaintiff's work/career. Here, the defamatory statement most certainly affected Suzie's career because she did not get the job and she is now known throughout the community as a drunk. This will harm her reputation when she looks for other work in the field of teaching children.

Tracy will argue that the statement was regarding a matter of public concern because it was regarding children in the community and the potential dangers they would be in with Suzie as their teacher. When the statement is regarding a matter of public concern, the plaintiff must also prove falsity and fault. To prove falsity, Suzie must show that Tracy knew or should have known that the information was false. Tracy will argue she only posted a picture and did not mention anything about Suzie's drinking. She will argue that she let the

picture speak for itself. Suzie will prove that Tracy knew that Suzie was not a big drinking and posed no threat to the children and that by posting the picture she was insinuating that Suzie has an alcohol problem. If the court determines the insinuation was that Suzie was a drunk, Suzie will be able to prove this element because Tracy knew Suzie did not drink that much. Further, Suzie will have to prove fault. When proving fault, the standard depends on whether the individual is a public figure or a private citizen. A public figure would have to prove malice, but a private citizen would have to prove negligence. Thus, Suzie must prove that Tracy was negligent with her statement and that she consciously disregarded a risk or was reckless with her behavior. Once posted, the picture was shared and seen by many people. Tracy knew the implications of social media and knew that once she posted the picture and accompanying caption that it was out there for the world to see, possibly to be shared by others Since Suzie can establish fault and falsity, she will win on her defamation claim.

As far as damages, Suzie can argue for damages from the contract as well as punitive damages, since there was malice involved (Tracy knew that Suzie was not a drinker and posted knowing this).

2. First, Suzie may assert tortious interference with business relations. If Suzie can prove the contract was definite enough, meaning that she would have most likely been hired had Tracy not interfered, she has a good chance of winning. To prove this, Suzie must show that Tracy knew about potential existing or future contractual relations between the academy and Suzie and that Tracy's interference with Suzie's contract costed her the job. Suzie can prove that Tracy knew about the potential for an employment contract because she said so in her social media post. Further, Suzie can prove that the interference cost her the job since she was more qualified than the person who got the job. Tracy will argue that she is not liable for tortious interference with business relations because there was no contract and there is no proof that Suzie would have gotten the job but for Tracy's interference. Further, courts are more willing to not determine someone is liable for tortious interference with business relations when there is no formal contract, when it was a matter of public concern, and when they are in competition for the same job/clients.

Here, there was no formal contract to interfere with since Suzie did not have the job. Further, it was arguably a matter of public concern because it was regarding who would be teaching young children. Suzie can combat this with the argument that Tracy knew she did not drink much, though. Further, Suzie was going after the same job and clients, but it was not done in a commercially acceptable way.

Second, Suzie can assert invasion of privacy, intrusion upon seclusion. To prove this, Suzie would have to show that Tracy intruded upon her privacy when she took her picture, enough so that a reasonable person would have been offended. She likely will not win this claim because the picture was taken in her dorm room. In another's college dorm room, Suzie would most likely not have a reasonable expectation of privacy. Tracy will argue that college students are always in each other's rooms, leaving the doors unlocked and frequently throwing parties. Because of this, Suzie could not have reasonably expected privacy in another's dorm room. Alternatively, Suzie will argue that her friend's dorm room was not a public place, but actually a private place and she was a social guest in her

friend's room. She would continue that the average person would expect privacy when they are asleep at night in the home of one of their friends. This would be a good argument. If the court determines that she could reasonably expect privacy, she could win.

Suzie would have to further argue that the picture taken would offend a reasonable person. She would argue that it would since she was sleeping. Next she would have to show that the picture was published, which she can show due to the fact it was posted on Tracy's social media page for all of her pals to see. Last, she would have to Tracy might attempt to argue a newsworthy exception, that the picture deserved to be shown because it was newsworthy. However, this defense will likely not prevail since Tracy knew that Suzie was not a drinker and that the picture was depicting a falsity.

Next, Suzie could argue intentional infliction of emotional distress. Suzie would have to show that Tracy's conduct was extreme and outrageous directed at Suzie. Next she would have to prove that Tracy's conduct would be extremely offensive a reasonable person. Last, Suzie would have to show that the extreme and outrageous conduct caused injury.

Last, Suzie could argue other invasion of privacy torts. The first would be False Light, where Suzie would have to prove that Tracy misrepresented Suzie's beliefs to the public. Suzie will argue that Tracy did this when she knowingly published a picture of her on her social media page to all of her friends insinuating that Suzie was a drinker, when Tracy knew Suzie was not a drinker.

QUESTION 3 - Sample Answer # 1

1. No, Opal may not force Tina to move out within ten days. This is an issue of notice termination of a tenancy. The time required for terminating a tenancy depends on the type of tenancy. Under these facts, the tenancy was likely a tenancy at will, but it could arguably be a periodic tenancy.

A tenancy at will is where the landlord and tenant agree that the tenant will rent the property from the landlord for an indefinite time. Payment in a tenancy at will is usually periodic, i.e., weekly or monthly. Tenancies at will do not fall within the statute of frauds, therefore a writing is not required for the lease. The default rule under Georgia law is that a landlord in a tenancy at will must give the tenant at least 60-days notice before terminating the tenancy. A tenant only has to give the landlord 30-days notice. Here, the 10 days requested by Opal would be insufficient, and Opal would have to wait at least 60 days before seeking removing Tina from the warehouse. Opal would not be able to forcibly remove Tina, and Opal would have to resort to an ejectment through the court.

Arguably the terms of the tenancy was a periodic tenancy. Periodic tenancies last for the specific interval of time--e.g., months, years, weeks. Because Tina was paying Opal monthly rent, arguably Tina had a periodic tenancy measured by months. In monthly periodic tenancies, either party can give 30-days notice of termination at any time, however, the notice is not effective until the beginning of the following month. If this was a monthly periodic tenancy, Opal would have to give Tina until the end of the following

month before requiring Tina to vacate. However, because their agreement that Opal would "provide plenty of notice" if she should sell and the relative informality of the tenancy, the agreement sounds more as a tenancy at will.

2. Paula likely cannot obtain specific performance or a rescission. Both of these claims are equitable, non-monetary remedies. Generally, all equitable remedies require (1) a claim allowing for an equitable remedy; (2) an inadequate remedy at law, meaning money damages will not sufficiently compensate the plaintiff; (3) that the court be able to properly shape the remedy in an order; and (4) that the court balance the benefits and burdens to the parties in making its decision.

Specific performance is a remedy where a party to a contract has performed or is ready, willing, and able to perform, and seeks to compel the other party to perform. Normally, land sale transactions allow for specific performance because land is seen as unique.
Here, Paula has purchased the property and closed on the contract. Part of the contract was that Opal would vacate tenants in 10 days. However, Paula has an adequate remedy at law for the time period in which Tina stays in the warehouse until she has to move out; Paula can collect Tina's rents because Paula, as the new owner, is entitled to those rents. Also, the court likely could not order Tina to vacate sooner than the law requires for terminating a tenancy, especially when Tina is not at fault. The court could order Opal to remove Tina after the proper notice period, though.

Rescission is also not likely. Rescission is a remedy where the plaintiff asks the court to cancel a contract and make it void, excusing performance and returning the benefits conferred to the respective parties. Contracts can be rescinded on grounds of fraud, misrepresentation, undue influence, duress, unconscionability, or mistake. In this case, none of those grounds exist. Opal did not apply any undue influence on Paula, did not coerce Paula, and the deal does not appear to be unconscionable. Paula may argue that Opal committed fraud by failing to disclose that she could not remove her tenant within 10 days. Fraud requires an intentional misrepresentation of a material fact that another party relies on to her detriment. However the notice provision for a tenant is a matter of law that is equally available to both sides, thus Paula would not have reasonably relied on that. Also, Paula still has her legal remedy of rents that she can collect, thus rescission would not be appropriate.

3. This is a statute of frauds issue. The statute of frauds requires contracts for the sale of land to be in writing and signed by the party to be charged (in this case, Opal). A land sale contract must have certain terms, including the names of the parties, a description of the property, the sale price, and the parties' signatures. Exceptions to the statute of frauds include if the buyer paid the full purchase price; the buyer has possession of the land and has made a partial payment; or the buyer has possession of the property and has made substantial improvements evidencing the deal. Here, Opal and Bella had an oral agreement that was never reduced to writing. Bella never paid any part of the price, never had possession, and never made any improvements. Accordingly, Bella's and Opal's agreement is unenforceable, and Opal can't be compelled to sell to Bella.

4. This is a question of quasi-contract and unjust enrichment. Generally, a contract

requires an offer, acceptance, consideration, mutual assent, and capable parties. Without the elements, there isn't an enforceable contract. Here, Opal only asked Bella's help in finding a buyer. There was no discussion of consideration, thus there was no contract.

However, there can be an implied-in-law contract or quasi-contract where a person accepts the services of another under circumstances where the person who performed is normally compensated. Amy is a real estate agent, and they are normally paid. Opal accepted her services, when she received offers from Bella and Paula. However, if Amy is only compensated for closed transactions, she can only expect to be paid for Paula's closed deal. The damages for quasi-contract are restitution, where the plaintiff is entitled to the reasonable value of her services conferred on defendant to avoid unjust enrichment. Because Amy performed by approaching Paula in response to Opal's request, Amy conferred a benefit to Opal and is entitled to be paid a reasonable fee.

Opal's best defense is if she did not know that Paula's offer came through Amy's efforts, thereby not making Paula unjustly enriched but rather only through Paula's independence efforts. This likely would fail because Paula would not have approached Opal but for Amy, who wouldn't have approached Paula but for Opal's request.

Amy is entitled to restitution.

QUESTION 3 - Sample Answer # 2

1. The issue is whether Opal may force Tina to vacate the premises and, if not, how much notice Tina is entitled to receive.

When parties make no agreement as to the duration of a lease agreement, a tenancy-at-will is implied. Lease agreements are subject to the Statute of Frauds, but part-performance satisfies the Statute. Under a tenancy-at-will, a tenant is required to give thirty days' notice to terminate a lease, and a landlord is required to give 60 days' notice. Here, the parties had a valid lease. Although the lease was oral, Tina's payments, as well as Opal's acceptance of them, is enough to satisfy the Statute of Frauds. Opal's ten-day notice to Tina violates the notice requirements for such a lease. Opal, therefore, cannot evict Tina until that time period has run.

2. The issue is the likelihood that Paula can get specific performance from Opal on the provision of their contract requiring Tina to be out, or the likelihood, in the alternative, of Paula's being able to rescind the contract.

Specific Performance

In Georgia, specific performance is generally available for contracts for sales of real estate, since real estate is unique and legal remedies are therefore presumptively inadequate. However, provisions in contracts requiring someone perform an unlawful act are not subject to enforcement by specific performance, and provisions requiring someone to do something impossible are not enforceable by specific performance.

The contract here is for a sale of real estate, so specific performance would generally be available. However, Opal cannot legally evict Tina. The reason is that Tina has not yet had the notice to which she is entitled. Evicting her within ten days is therefore unlawful, since the required notice has not been given. In the alternative, Opal could say it is impossible, as courts would not allow an eviction action to go forward. Although it is true that this impossibility is largely Opal's own fault, courts will not allow that to defeat her defense against specific performance where the rights of an innocent third party would be prejudiced.

Rescission

In order to obtain a remedy of rescission, plaintiff must show that the defendant's actions in inducing the plaintiff to contract were fraudulent, or that a fundamental assumption of the contract has changed, or that its purpose has been frustrated. Here, none of theories will merit rescission. As a general rule, when there is delay in performance of a land-sale contract, rescission is not available unless the contract specified that time is of the essence. Here, the contract did not specify that, so Paula would not be able to obtain rescission. Additionally, there is no evidence of fraud, which would require a knowing misrepresentation, or that a fundamental assumption of the contract has changed, since timing is not a fundamental assumption of the land-sale contract unless it specifies that time is of the essence. Even with these equitable remedies unavailable, however, Opal may still be liable in damages for her breach.

3. The issue is whether Bella may compel Opal to honor their oral agreement.

In Georgia, the Statute of Frauds requires that contracts for the sale of real estate be evidenced by a writing. When there is no writing, the agreement may nonetheless be enforceable if there has been part-performance or promissory estoppel.

Bella's contract with Opal was a real estate contract, so it is subject to the Statute of Frauds. The contract is therefore unenforceable without a writing. There is no writing evidencing the agreement with Bella, so that agreement is unenforceable. Additionally, nothing in the facts indicates that Bella began performing or that any money changed hands, so the part-performance exception to the Statute of Frauds does not apply.
Additionally, there is no indication Bella changed her position to her detriment based on the agreement, so she cannot claim promissory estoppel, either. Bella may not, therefore, compel Opal to honor their oral agreement.

4. In Georgia, a listing agent normally receives a portion of the proceeds of a sale for finding a buyer who is ready, willing, and able to purchase an advertised property. When there is no written listing agreement between an agent and a seller, an oral agreement may nonetheless be enforceable. The Statute of Frauds does not apply to agreements for the sale of services between an agent and a seller, since such an agreement is not a good over $500, a promise to pay a time-barred debt, a contract of suretyship, a contract for the sale of real estate, or any other category of transactions covered by the Statute. Even where there is no express oral agreement, a contract can be implied-in-fact by the parties' conduct. Finally, even where there is no enforceable contract, a party is entitled to

restitution when she has conferred a service on another which has unjustly enriched the other person.

Here, Opal told a commercial listing agent that she wanted to sell her property, and she asked for help in finding a buyer. Without more detail, it is unclear whether they formed an express oral contract or not. At the very least, however, they formed a contract implied in fact. A contract requires an offer, acceptance, and consideration. Opal's request to an agent to help her find a buyer likely constitutes an implied offer to form an agent-seller contract. Although Opal did not specify a price, a reasonable offeree agent would probably understand that the standard rate for brokers--per local industry custom--would apply. This was an offer for a unilateral contract, which Amy could accept by producing a buyer who was ready, willing, and able to purchase the warehouse. Finally, there was consideration in Amy's detriment in finding a buyer, and Opal's implied offer to employ her at the standard rate. By producing such a buyer, Amy accepted Opal's offer and performed on the contract. Opal, therefore, is liable for a Amy for a commission.

Finally, even if a court found Amy and Opal did not form an enforceable contract, Amy would still be entitled to restitution. She had conferred a benefit on Opal by giving her the services of an agent, and she had done so expecting payment in good faith. Since it would be unjust and inequitable to allow Opal to retain this unpaid-for benefit, a court would likely award Amy a commission.

QUESTION 3 - Sample Answer # 3

I. Opal Owner Did Not Provide Sufficient Notice to Tina Tenant

Under Georgia law, a tenancy at will can be created by a tenant and a landlord's mutual agreement to have the will go on for an indefinite period of time and can be terminated by either party, provided there is sufficient notice. Georgia requires landlord to provide 60 days notice to tenants and tenants must provide 30 days notice before termination of the lease. Additionally, some courts may consider a tenancy for an indefinite period of time as a periodic tenancy based on the pattern of rent payment collections. Under a periodic tenancy, a tenant is required to give notice equivalent to the date of the obligation, i.e. if a one month lease, the party must provide one month notice, with the exception of a year lease which requires 6 months notice.

Here, Opal and Tina likely had a tenancy at will. Assuming the parties oral lease agreement is enforceable, the informal agreement to allow Tina to use the warehouse did not have a set end date, as such was indefinite, and either party could end the agreement, with Opal assuring "plenty of notice." If the court considers this a tenancy at will, Opal was required to give 60 days notice to Tine as a tenant. She may argue that Tina was not a residential user, and instead used 25% of it for commercial purposes, however, under GA law, the landlord must give at least 60 days, thus 10 days was not sufficient.

If the court finds there was a period tenancy, then the court may find the landlord certainly was not able to end the lease absent at least 30 days notice because they agree to pay the

rent payments monthly. As such, 10 days notice still would be insufficient as at least 30 was required.

II. Paula is Unlikely to Receive Specific Performance But May Be Able to Rescind the Contract

Under Georgia law, a party is entitled to specific performance if (I) there was a valid contract, (ii) the party has fulfilled their obligation under the contract, (iii) the terms of the contract are clear, (iv) damages are not an adequate remedy, (v) some inequity will occur if the contract is/is not performed, and (v) the performance is feasible.

In this case, Paula and Opal had a valid contract. Georgia requires pursuant to the Statute of Frauds that contracts for the sale of land be in writing, signed by the parties, containing all material terms (price, description of the land, parties, etc). Paula drafted the contract for Opal to sign, Opal executed the contract and as such a valid contract for the warehouse was formed. Second, Paula has fulfilled her obligation under the contract. She closed on the house, presuming that she provided the agreed upon cash price that exceeded Bella's verbal offer. GA follows the majority jurisdiction requiring that a party provide actual possession to the land upon closing, meaning the property was then deemed to be in conformity with any deed provided, whether warrant, special or quitclaim. Third the terms were clear with the provision requiring any tenants be out within 10 days. Fourth, with land sales contracts, property is unique and as such damages usually are deemed an inadequate remedy. However, since this is a small portion of the warehouse, she may receive money damages or be entitled to the rent payment within the additionally 20 days. Fifth, there is arguably no inequity. The provision regarding the contract required the tenant to be out in 10 days. However, the tenant uses only 25% of the warehouse and GA law would require at least 30-60 days depending on if viewed as a tenancy at will or periodic. Also, the deed controls upon closing so the land sales contract may not be enforceable upon the deed warranties. Sixth, performance is feasible, as the court can evict Tina, however, the court may find this requires someone to monitor the property to ensure she is out by the deadline. Notwithstanding this, the court will likely find specific performance is not an adequate remedy.

Recession of a contract is a remedy that allows a party to negate a contract as if it was never formed if there was a unilateral mistake, fraud, or misrepresentation. A court will rescind a contract if a substantial part of performance has not been performed. If Paula argues there was misrepresentation, she may be able to rescind the contract. Fraudulent is representation occurs when a party falsely makes a statement or makes a material omission, in which the speaker knew the other party was not aware of the falsity of the statements and the party relied upon the statements being true. Here, there is likely no false misrepresentation since Opal did not have the intent to indue reliance based on the provision in the contract, and may have arguably that 10 days was "plenty notice." However, Paula may say it was a negligent misrepresentation since Opal did not verify the delivery of the property with the tenant and should have notified Tina during the escrow period before closing of the potential purchase, rather than after the closing. As such a court may, but is unlikely to rescind the contract, especially considering it relates to a small percentage of the warehouse.

III. Bella Buyer v. Opal

As mentioned above, GA law requires in accordance with the Statute of Frauds that land sales contracts be in writing. The contract between Bella and Opal was oral, as Opal verbally accepted. This is not sufficient since there is no evidence writing with the parties signatures and material terms. The exception to the rule would not apply, as there was no possession of the land by Bella with either improvements to the land or partial or full payment of the land. Had these actions occurred, she may have had a valid contract.

IV. Amy Is Not Entitled to Commission

Amy is not likely entitled to commission absent an enforceable contract. A contract is created when there is an offer, acceptance of the offer and consideration provided. An offer is an objective manifestation of the intent to enter a contract that creates the power of acceptance in the offeree. The acceptance is an unconditional assent to the willingness to the terms, and consideration a bargained for exchange. GA provides that consideration can be either a legal detriment or benefit incurred. Here, there was no contract formed as there was no meeting of the minds by the parties. Amy and Opal spoke about "plans" to sell the warehouse and she agreed to help find a suitable buyer. The parties never had an official offer of material terms of services as required under common law, and there was no agreement as to the terms or the price of the commission. Absent a price, common law will not find material terms were included. While there is no contract, she may argue a quasi-contract claim and assert she is entitled to commission under promissory estoppel if she relied to her detriment to the promise of being compensated for finding the buyer and Opal will be unjustly enriched. Opal was enriched but it was not unjust absent a formal agreement, as such she is not likely entitled to commission.

QUESTION 4 - Sample Answer #1

1. The Transaction Between Puffs-R-Us and Battery Bin is Governed by the Georgia Uniform Commercial Code

Georgia has adopted the Georgia Uniform Commercial Code (the "UCC"), which applies to the sale of goods. Goods are defined as any moveable object, which would include e-cigarette batteries. The UCC provides the default rules for the sale of goods between merchants. A contract for the provision of services, however, is governed by traditional contract principles. Where a contract is both for the provision of services and the sale of goods, the contract must be examined to determine its primary purpose, the sale of goods or the provision of services.

Here, Puffs-R-Us and Battery Bin are both merchants, and the agreement between them was for (1) the purchase of batteries to operate the E-Cig 3000 and (2) installation of said batteries. Examining the terms of the contract, it is clear that the contract is primarily for the purchase of goods, rather than for the provision of services. The confirmation is of the battery order, and the price of the batteries is four times the cost of the installation, which is referred to merely as a "fee."

2. The Parties Had a Valid Contract, Which Battery Bin Breached

I. Although, under the statute of frauds, contracts for the sale of goods worth more than $500 must be in writing signed by the party against whom it is sought to be enforced, the UCC provides a special exemption for forms between merchants. Where both parties are merchants engaged in the sale of goods governed by the UCC, a binding agreement can be formed unilaterally if one merchant sends to the other a signed written confirmation of the parties' agreement. The written confirmation must contain terms which specify (1) the price, (2) the quantity, (3) relevant deadlines, and (4) any other agreed upon terms. The agreement is deemed to be accepted if the receiving merchant does not object within 30 days of receipt.

In this instance, a representative of Battery Bin sent a signed written confirmation to Puff-R-Us which specifically provided: (1) a cost of $8,000 and installation fee of $2,000 (2) a quantity of 1,000 batteries for the E-Cig 3000, (3) to be completed within two months, and (4) that Puffs-R-Us would inspect all batteries upon receipt and immediately notify Battery Bin of any issues with the product. Therefore, a valid contract was created by the signed written confirmation containing the necessary terms and by Puffs-R-Us' failure to object (as demonstrated by their delivery of the 1,000 e-cigarettes to Battery Bin for installation pursuant to the agreement).

ii. While the signed written confirmation created a valid contract between the parties, Battery Bin breached the contract by providing defective batteries, rendering the e-cigarettes unusable. Under the UCC, contracts contain implied warranties of suitability and merchantability. The warranty of suitability provides that the goods purchased will be adequate for the purposes for which they were purchased. The warranty of merchantability provides that the goods will be of average quality, and effective for their intended use. In this instance, Puffs-R-Us indisputably purchased the batteries to be used in the e-cigarettes. Battery Bin was absolutely aware of the intended purpose, because it inspected the E-Cig 3000 and performed the installation. However, the batteries provided did not work, breaching both warranties.

iii. Under the UCC, where a buyer receives non-conforming tender, the buyer has several options. It can reject the goods completely and sue for damages, reject partially and accept partially, or accept the non-conforming goods. In this case, Puffs-R-Us contracted for the purchase and installation of batteries to operate their E-Cig 3000. The batteries they received were defective and rendered the e-cigarettes "unusable."

iv. Therefore, although the parties have a valid contract for the purchase and installation of batteries, the contract was breached because the batteries were defective and therefore Battery Bin will not be able to enforce the agreement.

3. The Additional Term in Battery Bin's Confirmation

The final issue is whether the additional term in Battery Bin's written confirmation is enforceable. Under UCC's "battle of the forms," where an additional term is inserted into an agreement between merchants which does not contradict terms previously provided, the

term will be enforceable so long as the other party does not object. Here, Puffs-R-Us did not object to the term, thus making it enforceable. Puffs-R-Us did fail to inspect "all" batteries, as required by the additional term, although they did immediately notify Battery Bin upon learning "within days" that the vendors to whom the e-cigarettes had been distributed complained that the batteries did not work.

Further, as discussed above, the implied warranties provided by the UCC apply in this instance. A party cannot disclaim a warranty without an express provision. The written agreement contained no such disclaimer, and the additional term will not be construed to tacitly operate as such. Georgia courts do not even find that "as is" clauses operate as sufficient disclaimers to remove all warranties. Furthermore, where one party has significantly breached the contract, it will not be able to rely on a minor and relatively insignificant breach of the other party to escape liability for its breach.

Thus, although Puffs-R-Us failed to inspect the batteries, Battery Bin will not be able to rely on that failure to force Puffs-R-Us to pay for the defective batteries.

QUESTION 4 - Sample Answer #2

1. This transaction would be governed by the GA UCC. The issue is whether Puffs-R-Us ("Puffs") and Battery Bin ("Battery") have a contract for the sale of goods. The Article 2 of the UCC governs the sale of goods. Goods are all moveable things identified at the time the contract was made. Common contract law governs the transaction of services.

Services are defined as a performance of a duty which requires someone to perform an actual task. (Ex. painting, installation, etc.) When a sale includes goods and services, whether it is governed under the UCC depends on the jurisdiction. There are three tests that determine whether the transaction is for the sale of goods, services, or both. The first test looks at the primary purpose of the transaction. If the primary purpose of the transaction is to retrieve the goods and the service is incidental to the goods, the transaction is for the sale of goods. The second test looks at the costs of each within the transaction. If the service costs more than the goods, then the transaction is really for the service. However, some states hold that the UCC should apply to the goods portion of the transaction and common law should apply to the service part of the transaction. Under GA law, the courts look to the primary purpose of the transaction. Here, the primary purpose of the transaction is to receive the batteries for the e-cigarette model. Puffs contacted Battery specifically for the production and installation of 1,000 batteries. They needed a battery that would work their e-cigarette and provided model specifications to Battery in order to get the specific kind they needed. Additionally, even if GA looked to the costs of the transaction, the transaction would still be governed under the UCC. The cost of the battery was $8,000 while the installation was $2,000. It is clear that the installation was incidental to the battery. This transaction is governed by the GA UCC.

2. This transaction yielded an enforceable agreement under Georgia law. The issue is whether there was a valid contract under the UCC. A valid contract requires mutual assent and consideration. Mutual assent is generally shown in the form of an offer and

acceptance. An offer is an intentional expression to enter into a bargain. The offer must show the intention of the offeror and include the essential terms of the agreement. An acceptance is an assent to the terms of the offer. Generally, the acceptance must be communicated to the offeror and be unequivocal. Here, there is a valid offer and acceptance. Battery offered to supply and install 1,000 for the price of $8,000 and $2,000, respectively, and Puffs accepted the terms.

Consideration is a bargain-for exchange. The bargain-for must be of legal value and consideration must exist on both sides. Here, there is sufficient consideration. Puffs will pay the said price and Battery will supply and install the batteries.

As mentioned above, this transaction is governed by the UCC because it is a transaction for the sale of goods. Goods are all moveable things identified at the time the contract was made. Furthermore, Puffs and Battery are merchants. Merchants are individuals who deal in the kind of goods being sold under the contract or someone who, based on their knowledge and expertise, hold themselves out to be a dealer in a particular good. Companies are merchants for the purpose of this transaction.

Puffs and Battery made an express agreement to enter into a contract. However, an oral contract is not enough. Under the Statute of Frauds, certain agreements must be in writing, such as the sale of goods for more than $500. Here, we have a sale of goods for $8,000. In order to satisfy a writing under the Statute of Frauds, the writing must contain the essential terms (price, quantity, and subject matter), must be signed by the party it is sought to be enforced against, and the names of both parties to the transaction. A signature is construed liberally by the courts. A signature can be any indication that there was an intent to authenticate the writing, such as initials or letterhead. Battery could contend that there was not a writing. However, when the parties are merchants, a written confirmation may satisfy the writing requirement where it confirms the agreement discussed and bind the sender as well as the recipient if (1) the recipient knew or had reason to know of its contents and (2) they did not object to the confirmation within 10 days of receipt.

Battery faxed a written confirmation to Puffs that memorialized the terms discussed, and it was signed by a Battery representative. Puff also did not object to the confirmation. The confirmation satisfies the Statute of Fraud.

Also, part performance can take a transaction out the Statute of Frauds if (1) the goods were specially made for the buyer or (2) there was partial payment or acceptance. However, the batteries did not have to be specially designed since the e-cigarettes could use the standard battery. Additionally, the facts do not indicate that Puffs paid Battery and they did not accept the batteries since they informed Battery that the batteries were not working. However, because there was a writing that satisfied the Statute of Fraud, there is an enforceable contract.

3. The additional term in Battery Bin's written confirmation is enforceable. The issue is whether the additional term is a part of the contract or fell out of the agreement. Under 2-207 Battle of the Forms and GA law, when dealing with two merchants, upon acceptance of the agreement, additional terms and different terms do no not destroy the contract.

Additional terms become apart of the contract unless there is an expressed rejection, the terms materially alter the agreement, or the new term contradicts an agreed upon term. If there is an express rejection, contradiction, or material alteration, the terms drop out and gap fillers take their place. Some jurisdictions hold that all additional and different terms drop out and gap fillers take their place, but that is not the case in GA. Because GA follows the first rule, the additional terms are terms in the contract and enforceable. The written confirmation provided that Puffs would inspect all batteries upon receipt and immediately notify Battery of any issues. The term does not contradict any terms that were already agreed to, did not materially alter the agreement (nothing changed), and Puffs made no objection to the inspection provision. Puffs would argue that the inspection provision is not reasonable because in order to inspect the batteries, the e-cigarettes would have to put to use. However, a Puffs employee used one of the e-cigarettes to smoke and did not complain of it not working. Puffs could argue that one e-cigarette out of 1,000 is not enough to constitute an inspection. But Puffs should have objected to the inspection provision so it could not become a part of the contract. Because Puffs did not object, the additional term is enforceable.

QUESTION 4 - Sample Answer #3

1. Yes this contract is controlled by the UCC.

In Georgia, the UCC applies to goods contracts, while common law applies to services contracts. Goods contracts are the purchase and sale of tangible objects. This means that the batteries are goods. But contracts are often mixed. Where a contract mixes goods and service, courts use a "principal objective" test. This is often reduced to a formula - whichever element, goods or services, constitutes the majority of the contract price establishes the type of contract. Here, the contract is for $10,000. 80% of that contract is for goods, the batteries cost $8000. 20% of the contract is for services, $2000 for installation. Because 80% of the contract is for goods, the UCC controls.

2. Enforceable contracts require offer, acceptance, consideration, and no defenses.

It is unclear the exact nature of offer & acceptance. Offers must contain sufficient information that a reasonable person would think they have the power to bind the offeror. The initial inquiry into the price for new batteries was not an offer by PRU because it was formed as a question or an invitation for an offer. Nonetheless, the facts tell us of an agreement reached in person. A BB (seller) representative visited the PRU (buyer) offices to discuss costs & fees & quality of product. The facts tell us that specific terms were discussed in the meeting. With this information, it would appear there was a sufficient meeting of the minds to form a contract. As will be discussed in Part 3, this meeting of the minds may not have been perfect. However, the UCC specifically allows for acceptances that differ from the offer. A contract is therefore certainly formed, though Part 3's battle of the forms discussion may inform its contents.

The contract was also supported by consideration. PRU promised to pay, and BB promised to offer services.

There are also no valid defenses. Namely, the statute of frauds and counter-party non-performance do not apply.

Goods contracts over $500 must satisfy the statute of frauds. This contract is for $10,000 so the statute of frauds applies. The statute of frauds must be overcome by objective proof. There are two relevant kinds of objective proof here, both of which satisfy the statute of frauds. One is a writing signed by the party sought to be held liable. Here, PRU is seeking to avoid the contract, so we must locate a writing signed by PRU. The UCC contains a special confirmatory memo rule for goods contracts between merchants.

Merchants are parties that regularly conduct business. Both parties are merchants - BB in the battery business and PRU in the vape business. The confirmatory memo rule explains that a post-agreement writing, sent by one merchant to another, becomes binding upon both merchants if the receiving party does not object. The confirmatory memo must include quantity. The facts show that BB's confirmatory memo was proper - including both the quantity (1000 batteries) and the price. The facts indicate that PRU received BB's confirmatory memo and did not object, therefore the statute of frauds is satisfied. The statute of frauds may also be satisfied by complete performance by one party. We have that here, with BB producing, installing, and shipping the batteries within the contract period.

Furthermore, BB has not breached the contract. The UCC demands that buyers (PRU) provide sellers (BB) an opportunity to cure. This includes an absolute right to cure within the contract period. Here, it is immaterial whether or not BB actually breached. Their agreement was for delivery within two months. BB's allegedly non-conforming batteries were shipped within one month. This means that PRU is legally obligated to give BB one month, the remainder of the contract period.

With a meeting of the minds, consideration, and no defenses, there is an enforceable contract.

3. The confirmatory memo rule is an expansion of the battle of the forms. Battle of the forms rules discuss how to treat acceptance & memorialization that does not perfectly conform to the offer. Under the UCC, additional terms are incorporated into the contract where three elements are met: (1) both parties are merchants; (2) the other party does not object; (3) the added term is not material.

Both parties are merchants - BB in the battery business and PRU in the vape business.

PRU did not object to the new term. There are two methods to object to a term - either expressly or by limiting an acceptance to the terms of the offer. The facts indicate that PRU received and did not object to the memo, and no facts indicate the presence of an expressly limited offer.

The new term was not material. Material terms are those that affect the legal rights and remedies of either party. Classic examples of material terms are waivers of warranty and forum selection clauses. Here, the material term was simply an additional promise by PRU

- to inspect the batteries and notify BB of any defects. The promise does not directly limit any of PRU's rights and is therefore not material. It is of importance that the duty to inspect was not tied to any warranties - BB still remains liable for its implied warranty of mercantability.

Also note that under the UCC, modifications of a contract to not require consideration - they must simply be undertaken in good faith. This is contrary to the common law. There is nothing in the facts to indicate that BB's confirmatory memo was written as a bad-faith effort to "sneak in" new terms.

With no bad-faith, and all the elements for non-conforming acceptance met, the new term will be part of the contract.

MPT 1 - Sample Answer # 1

OFFICE OF THE DISTRICT ATTORNEY FOR THE STATE OF FRANKLIN
COUNTY OF JUNEAU

OFFICE MEMORANDUM

To: Juliet Packard, District Attorney
From: Applicant
Date: July 24, 2018
Re: Motion for new trial in State v. Hale, Case No. 17 CF 1204

III. Legal Argument

Pursuant to the Fifth and Fourteenth Amendments, the prosecution may not suppress any exculpatory evidence. Haddon v. State, Franklin Sup. Ct. 2012. The three components for determining whether such evidence is subject to disclosure is: (1) the evidence is favorable to the defendant, (2) the government must have either willfully or intentionally suppressed the evidence, and (3) the evidence is material. Strickler v. Greene, 527 U.S. 263 (1999). If such evidence was admitted or suppressed in error, the court must then determine whether such an error is reversible under Franklin Code of Criminal Procedure 33.

A new trial may be granted if the trial court (1) violated a constitutional provision, statute, or rule (including a rule of evidence) and (2) such error was prejudicial to the defendant.

Franklin Code of Criminal Procedure 33. When the court erroneously admitted or denied admission of certain evidence, then the error is evaluated for its prejudicial effect. State v. Preston, 2011. Where there is a "strong probability" that the result at trial would have been different but for the error, then such an error is reversible under the Franklin Rules of Criminal Procedure 33. In Preston, the court reversed and remanded the defendant's conviction where the trial court admitted "blatant hearsay" by the defendant's wife, when the two were engaged at the time of the crime, and therefore their marriage did not qualify for the "procuring unavailability" exception. State v. Preston, 2011.

The defendant argues here that the prosecution failed to disclose and the trial court failed to admit two pieces of evidence, which it argues are in its favor. Further, he argues that it was reversible error to admit Sarah Reed's ("Reed") testimony because it should have been suppressed under the spousal privilege. Because evidence of Reed's recantation and Turmbull's inconsistent statements do not meet the three-part test for Brady violations set out above, the trial court properly suppressed such testimony. Further, because the defendant procured Reed's testimony by marrying her after the crime occurred and before trial, the court properly permitted her testimony under Rule 804.

Finally, because the trial court did not violate any constitutional provision, rule of evidence or statute, the court should deny the defendant's motion for a new trial under Federal Code of Criminal Procedure 33.

A. The motion for a new trial should be denied because evidence of Hale's recantation was not actually favorable or material to the case and was therefore properly excluded.

Evidence used to impeach a prosecution witness is "favorable" for the purposes of the test. Giglio v. United States, 405 U.S. 150 (1972). Here, the defense argues that the failure to admit Sarah Reed's ("Reed") recantation of her prior identification of Hale as the shooter is favorable and material to the defense because the jury would be less likely to convict based on such evidence. Generally, evidence used to impeach a prosecution witness is "favorable" for the purposes of the test. Giglio v. United States, 405 U.S. 150 (1972). However, the evidence here does not actually impeach Reed's prior inconsistent testimony, and therefore should not be admissible. Reed came in to "recant" the day after her marriage to the defendant, after "he told [her] to tell [police] that he didn't do it." Because the facts surrounding this statement to Detective Jones do not support it as being truly "favorable" to the defense, it is not subject to Brady disclosure.

The defense also argues that the failure to disclose evidence of Reed's recantation was prejudicial error. Suppression of evidence may be intentional or inadvertent; therefore, an open file policy, which reduces the defense's inclination to request conflicting documents, may still result in suppression of Brady evidence. Haddon v. State, 2012. Relatedly, the evidence must be solely in the possession of the prosecution or other entity charged with investigation to be subject to disclosure. Such evidence is not subject to Brady disclosure when the evidence is "fully available to the defense through the exercise of due diligence." State v. Capp, 2014. However, unlike the witness's statements in Haddon, the defense here had an equal opportunity to obtain evidence of Reed's recantation. Although it is true that an open-file policy, like the one maintained by the prosecution here, may lead the defendant to be less likely to investigate for further exculpatory evidence, this is not the case here. Reed recanted her testimony at the direction of the defendant. Therefore, he cannot claim to be unaware of such evidence. As discussed above, Reed's testimony is not subject to Brady because it is not favorable or material. But even if it were, the prosecution did not err by failing to disclose such evidence because it was not solely in their possession.

Evidence is material when there is a "reasonable probability" that result at trial would have been different had the jury heard the evidence. Haddon v. State, 2012. This determination

is based on a "collective" view of the evidence as a whole. Haddon v. State, 2012. Further, the victim's prior inconsistent statement was both material and favorable because the jury would have been less likely to convict the defendant based on such evidence. Haddon v. State, 2012. Here, Reed's prior inconsistent statement here is not material because it would not lead the jury to a different finding. As discussed below, Reed's recantation was procured the day after she married Hale and at his direction.

Given this context, the jury would be unlikely to reach a different determination and the trial court therefore rightfully suppressed the recantation.

Because the trial court did not violate a constitutional provision, statute, or rule of evidence in failing to admit Reed's testimony, there was no prejudicial error under Rule 33 permitting a new trial.

B. The motion for a new trial should be denied because the trial court properly suppressed evidence of Trumbull's statements to the EMT, which were not in the possession of an investigative officer, and therefore not subject to Brady disclosure.

The defense argues first that Trumbull's statements to the EMT, Gil Womack, are favorable to the defense because they conflict Trumball's trial testimony, thereby making the jury less likely to convict. Evidence used to impeach a prosecution witness is "favorable" for the purposes of the test. Giglio v. United States, 405 U.S. 150 (1972).

However, these statements are not "favorable" to the defense when viewed in totality. Womack's testimony states that Trumbull was under heavy narcotic sedation at the time the statement was made. Therefore, the trial court was correct to suppress Trumbull's statements that the event was "all Hale's fault" but that he wasn't "certain what happened" because his testimony lacks credibility.

Further, even if the evidence is deemed to be favorable and material to the defense, this evidence is not subject to Brady because it was not in the "possession" of an investigating officer. In determining whether the government "suppressed" evidence, the first question is to determine whether the evidence at issue was in the government's "possession." The government is in possession of evidence when it is in the possession of the police department or any government entity involved with investigation or prosecution. Kyles v. Whitley, 514 U.S. 419 (1995). If the entity is in possession of such evidence, then it must be disclosed under Brady. In State v. Capp, Franklin Ct. App. 2014, the court found that the evidence was not subject to Brady when the evidence at issue was in the hands of a county hospital, because such an entity is not involved in investigation.

Here, the evidence of Trumbull's statements were made to an EMT. Defendant's Brief. Like the evidence in Capp, evidence in an EMT's hands is used primarily for medical, not investigative purposes. Because it was not in the hands of a government entity charged with investigating the crime, the EMT's statements are not subject to Brady disclosure.
Further, Womack testified that he was not in any way involved in the prosecution or investigation of the crime. In fact, he was not even called as a witness by the defense. Therefore, Womack's statements were not in the "possession" of the government or an

investigative entity, and therefore were not willfully suppressed by the prosecution.

Because the trial court did not commit a violation of a rule of evidence or any constitutional or statutory provision, there is no reversible error under Rule 33. The court should therefore deny the defendant's motion for a new trial because there are no grounds on which a new trial may be granted.

C. The trial court did not err in permitting Reed's testimony because the spousal privilege does not apply in circumstances where the defendant married the witness after the crime occurred in order to preclude her testimony.

First, Franklin Rule of Evidence 804(a)(1) ("FRE") provides that certain evidence that would otherwise be hearsay may nonetheless be admissible if the declarant is unavailable. State v. Preston, Franklin Ct. App. 2011. A declarant is unavailable if they are subject to a recognized privilege, such as the spousal privilege. FRE 804(a). Second, if the declarant is unavailable, the next step is to determine if the statement meets any of the hearsay exceptions outlined in Rule 804(b). One exception to the spousal privilege exception exists where the defendant wrongfully caused the declarant's unavailability, intending such a result. FRE 804(b)(6). If a defendant marries the witness with the purpose of preventing her from testifying under spousal privilege, then this would qualify for the hearsay exception listed above. State v. Preston, 2011. However, when the marriage occurs in the normal course of events (for example, where they were engaged prior to trial), then the defendant did not "wrongfully cause the declarant's unavailability." State v. Preston 2011.

Here, the defense argues that the failure to admit Reed's initial out-of-court statement constitutes prejudicial error to the defense. They argue that a "significant motivation" in Hale marrying Reed was not to procure her unavailability, and therefore the statements should be admissible. However, in Preston, the defendant and the witness were engaged to be married before the crime occurred. Here, Hale proposed to Reed July 25, 2017, while the crime occurred on June 20, 2017. Therefore, the defense could have been said to "procure" her unavailability by proposing to her after the crime occurred, in order to prevent her testimony. Reed's testimony that Hale wanted to marry her quickly, before trial, supports this claim that his "purpose" in the proposal was to prevent her testimony.

Because the purpose of the marriage was likely to prevent Reed's testimony, her out-of-court statements should be admissible under FRE 804(b)(6).

Because the trial court properly permitted Reed's testimony under the rules, there is no prejudicial error under Rule 33. The court should therefore deny the defense's motion for a new trial because no violations of the rules occurred entitling the defense to a new trial.

For the reasons stated above, the trial court should deny the defendant's motion for a new trial.

MPT 1 - Sample Answer # 2

Legal Argument

I. The State did not violate Brady, but even if it did, Mr. Hale was not prejudiced by any violation.

There are two putative Brady violations: (1) The State's failure to disclose Sarah Reed's recantation in a statement to the police; and (2) the State's failure to disclose Bobby Trumbull's statement to emergency medical technician's (EMT) while Mr. Trumbull was heavily sedated by narcotics. Both arguments fail for a litany of reasons, as fully discussed below.

A. Ms. Reed's subsequent recantation was fully available to the defense and thus the failure to disclose the statement was not a Brady violation.

Hale argues that the State has violated its duty to disclose favorable evidence to the defendant. As the Franklin Supreme Court outlined in Haddon v. State, there are three elements for a Brady violation: "(1) The evidence must be favorable to the defendant; (2) the government must have suppressed the evidence, either willfully or unintentionally; and (3) the evidence must be material." (Fr. Sup. Ct. 2012). These elements are addressed in turn; Mr. Hale fails to satisfy each element.

For evidence to be "favorable" to the defendant, as Hale states in his Brief in Support of his Motion for a New Trial, it must "make a neutral fact-finder less likely to believe that the defendant committed the crime with which s/he was charged." Here, Ms. Reed recanted her prior statement to the police on the day after she married Mr. Hale. More importantly, during this recantation, Ms. Reed stated that "He just tole me to tell you that he didn't do it." Testimony of Detective Mark Jones during the Hearing on Defendant's Motion for a New Trial. The only "He" should could be referring to was Mr. Hale. Thus, if Ms. Reed's recantation was admitted into evidence, the circumstances under which the recantation occurred would also have been admitted. Accordingly, a jury would find it more likely that Mr. Hale was guilty, rather than less likely, because Mr. Hale was the driving force behind the recantation per Ms. Reed's own words.

Turning to the second element, the government did not "suppress" this evidence because the evidence was fully available to the defense. Under State v. Capp, admittedly in dicta, the Franklin Court of Appeal recognized that "a prosecutor is not required to furnish a defendant with Brady material if that material is fully available to the defense through the exercise of due diligence." (2014) (Emphasis added.) Here, Ms. Reed was married to the Defendant, Mr. Hale, and even told the officers during the recantation, as outlined above, that Mr. Hale told her to recant the story. Accordingly, this exception to the duty to disclose applies.

Third, the evidence is not material and necessarily not prejudicial. In Haddon, the Franklin Supreme Court recognized that if evidence was "material" it "necessarily" requires a finding of prejudice. The test of materiality is whether "there is a reasonable probability that the result of the trial would have been different." Here, there is no reasonable probability that the result would have been different because this evidence actually would have hurt Mr.

Hale if it had been admitted. It is reasonable to presume that the defense did not raise the issue of the State's failure to disclose the recantation, even though this evidence was fully available to the defense, because the defense made a tactical determination that this evidence would have hurt Mr. Hale. Accordingly, this evidence was not material nor prejudicial.

Lastly, Haddon recognizes that an "open file" policy, which Franklin prosecutors' employed in this case, makes it more likely that the defense will trust that the State has disclosed all Brady material. But Mr. Hale's reliance on this language is misplaced when the evidence is not only fully available to the defense, but was manufactured by the defense. Here Mr. Hale was the driving force behind Ms. Reed's recantation, according to Ms. Reed herself. Thus, there is no reliance interest by the defense due to the "open file" policy.

B. The State did not violate Brady because Mr. Trumbull's statement to the EMT was not in the "possession" of the State within the meaning of Brady and it was fully available to the defense.

Sticking with the elements outlined above, Mr. Hale fails to satisfy any of the three elements of a Brady violation.

While Haddon recognized that impeachment evidence is favorable, the evidence of Mr. Trumbull's statement may not have been favorable considering Mr. Trumbull's intoxication due to heavy narcotics. After being shot, the EMT recognized that Mr. Trumbull was heavily medicated by the EMT with potent narcotics. This statement is at best neutral because it was involuntary due to Mr. Trumbull's heavily medicated state. Nevertheless, Mr. Hale's argument regarding this alleged Brady violation fails for failure to satisfy the second and third elements.

The Franklin Court of Appeal recognized in Capp that the "first question raised by 'suppression' is whether the evidence at issue was in the 'possession' of the government." Capp recognized that records in the hands of Franklin government agencies that have no role in the prosecution of the case are not in the "possession" of the State within the meaning of Brady. In Capp, the court found that medical records held at a hospital were not in the possession of the State and thus held that these records were "not subject to disclosure under Brady." As the Capp's court found, this Court should find that the statement to the EMT was not in the possession of the State. Accordingly, this Court should hold that the State's failure to disclose this evidence did not violate Brady.

Furthermore, Mr. Hale fails to satisfy this second element for one more reason, this evidence was fully available to Mr. Hale. During the Hearing on this Motion, the EMT testified that he would have voluntarily spoken to Mr. Hale's attorney if he was asked to. Thus, both parties had equal access to this evidence, and this evidence was fully available to Mr. Hale. Accordingly, this element is not satisfied. See Capp.

Lastly, this evidence was not material given Mr. Trumbull's heavily intoxicated state. Mr. Trumbull fell asleep shortly after making this statement. Furthermore, the EMT recognized that Mr. Trumbull was heavily medicated by potent narcotics. Thus, a reasonable probability

does not exist that this evidence would have changed the jury's verdict.

II. The circumstances of Mr. Hale's marriage and Mr. Hale's threat to end the marriage were sufficient evidence to establish that the trial court's determination was not clearly erroneous.

Mr. Hale argues that the trial judge wrongfully permitted Ms. Reed's testimony under the Franklin Rule of Evidence (FRE) 804(b)(6) exception to hearsay. Under FRE 804(a)(1) a witness who claims spousal privilege is considered to be unavailable. But FRE 804(b)(6) permits the admission of a hearsay statement which is "offered against a party that wrongfully caused...the declarant's unavailability as a witness, and did so intending that result." As the Franklin Court of Appeal recognized in State v. Preston, "the Rule requires that the conduct causing the unavailability be wrongful" but not criminal. (2011). In the case sub judice, the trial judge determined that Mr. Hale wrongfully caused Ms. Reed to be unavailable as a witness. Trial Transcript, April 26, 2018. In making this determination, the trial judge relied on evidence that Mr. Hale threatened to leave Ms. Reed, if she testified, and evidence of the timing of the marriage, which was suspicious because the marriage occurred in between the shooting and trial.

As Preston pointed out, this Court must determine whether the trial court's determination of wrongful causation was clearly erroneous. As part of this inquiry, this Court must determine whether the evidence that the trial judge relied one was sufficient to justify its determination that Mr. Hale's wrongful conduct caused Ms. Reed to be unavailable. The trial judge had ample evidence that supported this determination. First, the suspicious timing of the marriage. Although Ms. Reed's self serving testimony stated that the two had begun dating in March 2017, Ms. Reed admitted that Mr. Hale proposed on July 25, 2017 and that they were married just one month later on August 25, 2017. Ms. Reed also testified that prior to their relationship in 2017, they had only dated "four years ago for about seven month." This evidence shows that the timing and rush to marry was at the very least suspicious. Second, Ms. Reed testified that Mr. Hale told her "that it would be hard for us to stay together if I testified against him." The coercive nature of this threat supports the trial court's determination. These two pieces of evidence are sufficient to satisfy the clearly erroneous standard that this court must adhere to. Accordingly, there was sufficient evidence for the trial court to have found that a significant motivation for Mr. Hale's marriage to Ms. Reed was to prevent Ms. Reed from testifying.

Mr. Hale primarily relies on Preston for his argument that the trial court's finding was clearly erroneous. But Preston is distinguishable because there the two had been engaged prior to the events that led to the charged crime. Furthermore, the court there specifically found that the "marriage appears to have occurred in the normal course of events." Here, the marriage did not occur in the normal course of events due to the timing and quickness of the marriage. Excluding their brief soiree in 2013, Mr. Hale and Ms. Reed had been seeing each other for less than five months before getting engaged in July of 2017. Furthermore, their engagement did not occur until after the shooting of Mr. Trumbull, which distinguishes these facts from Preston.

Lastly, Mr. Hale was not prejudiced, even if this court holds the trial court's finding was

clearly erroneous. Mr. Hale cannot show that but for the introduction of Ms. Reed's testimony, there is a strong probability that Mr. Hale would not have been convicted. Mr. Trumbull identified Mr. Hale as the shooter. Eye witness testimony such as that is too strong to overcome by the exclusion of corroborating evidence, such as Ms. Reed's. Thus, this Court should affirm Mr. Hale's conviction.

MPT 1 - Sample Answer # 3

State v. Hale
State's Brief In Opposition of Motion for a New Trial

I. Standard of Review

a. Standard for New Trial under FRC 33

"Upon defendant's motion, the court may vacate any judgment and grant a new trial if an error during or prior to trial violated a state or federal constitutional provision, statute, or rule, and if the defendant was prejudiced by that error. In appropriate cases, the court may take additional testimony on the issues raised in the motion. No issue may be raised on appeal unless it has first been raised in a motion for a new trial."

b. Standard for Brady Violation

The Due Process Clause of the 5th and 14th Amendments prohibit the prosecution from suppressing any exculpatory evidence that is: 1) favorable to the defendant; 2) suppressed either willfully or unintentionally by the prosecution; and 3) material. Haddon v State (citing Strickler v. Greene)

I. Admission of Reed's Out-of-Court Statement was Proper Because Defendant Proposed to Marry Reed After the Crime with The Purpose of Making Reed Unavailable

For a new trial, an evidentiary violation requires a separate determination of prejudice under FRC 33. First, Franklin law grants a privilege to a person from testifying against their spouse. Only the accused may claim this privilege, and the spouse must be married at the time that the privilege is asserted... FCS 9-707. Reed and Hale meet these factors, as they were spouses during the time of trial.

Franklin Rule of Evidence 804, however, allows for privileged testimony to be admitted if it meets an exception under FRE 804(b). FRE 804 defines hearsay exceptions for unavailable declarants. The statute provides that some hearsay evidence may be admissible if the witness is unavailable. FRE 804; State v Preston. A witness who claims spousal privilege is considered to be unavailable. FRE 804(a)(1); Preston. To be admitted despite the privilege, a statement must meet a hearsay exception defined in 804(b). Preston. One exception is when the hearsay statement is "offered against a party that wrongfully caused--or acquiesced in wrongfully causing--the declarant's unavailability as a witness, and did so intending the result. The conduct need only be wrongful, not

necessarily criminal. FRE 804(b); Preston. Franklin recognizes wrongfully causing a marriage for the purpose of excluding a person's testimony as a wrongful act that makes a witness unavailable, thereby allowing the previously privileged statement to come in under the exception. State v. Preston. A court must establish facts that demonstrate a significant motivation for the defendant's entering into the marriage was to prevent his or her spouse from testifying. Id.

Here, there is sufficient facts to establish that Hale's significant motivation in marrying Reed was to prevent her from testifying in this matter. Reed testified on the court's questioning that the Defendant wanted to marry her quickly before trial. (P. 6) The defendant also made a threat that he would not marry Reed if she testified against him. (p.
6) The day after they were married and the privilege was established, Reed returned to police to recant her statement to police officers because the Defendant "told me to tell you that he didn't do it". Finally, Reed testified that she and Hale had begun dating four years ago, but only for seven months. They did not date again until two months before the accident. Reed proposed the month after the alleged crime took place.

These facts are sufficient to establish the Hale's motivation in making Reed unavailable for testimony. These demonstrate the marriage did not occur in the "regular course of conduct", rather, they were Hale's attempts to make Reed unavailable to testify against Hale. The defense would cite and read Preston differently saying that a marriage after a crime does not necessarily mean the defendant acted wrongful. Preston, however, contained no facts supporting the marriage occurred outside the regular course of conduct, this case is rife with such facts. Further, the defendant was also engaged to his spouse some time prior to the crime in question. The court could not establish facts that showed the defendant's significant motivation, unlike the case here. Therefore, the court should uphold the admission of the hearsay-excepted statement from Reed.

Finally, public policy should not exclude this exception to hearsay because it arises from the defendant's improper action. The policy behind the exception is that wrongful conduct cannot make witnesses unavailable, it has little to do with finding spousal privilege and then allowing testimony because of the defendant's wrongful conduct. As the law stands, the exception serves an important policy purpose of deterring wrongful conduct to remove witnesses.

II. The Defendant Will Not Be Prejudiced by the Failure to Disclose Because There Was Sufficient Evidence to Convict Regardless of the Inadvertent Non-Disclosure and the Excluded Testimony Was Not Reliable in the First Place

The Due Process Clause of the 5th and 14th Amendments prohibit the prosecution from suppressing any exculpatory evidence that is: 1) favorable to the defendant; 2) suppressed either willfully or unintentionally by the prosecution; and 3) material. Haddon v State (citing Strickler v. Greene). The defense is correct that impeaching evidence is considered favorable to the defense. The statements were contrary to the in-court testimony, and therefore are probably favorable to the defense. Giglio. But the state contests the material was in their possession, and this brief will discuss this element later. The main contention is that this evidence, even taken cumulatively, would not materially prejudice the defendant.

"Evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Haddon. The court must look at the evidence in question cumulatively to determine materiality. Id. Here, there is substantial evidence that the inclusion of the evidence would not have changed the outcome.

A. Reed's Recantation and Trumbull's Mistaken Statement Were Not Material Because They Would not Change the Outcome of Trial

Franklin law requires a "reasonable probability" that the result of the trial would have been different had the excluded evidence been given to defense counsel. The defense argues that the prior inconsistent statements would determine this case, but the facts surrounding them speak otherwise, even when taken cumulatively as required by Haddon.

First, Reed's Recantation would not lead to a reasonable probability of an acquittal because she told officer's it was at the behest of Hale. Reed testified that she had first hand, eye witness sight of the incident. She identified the defendant, her boyfriend at the time and described the event in detail. The recantation did not occur until after the two were married, which was after the crime. Reed further suggested that Hale had asked her to come the police officer because "He told me to tell you he didn't do it." (p.9) When asked if she meant the defendant, Reed did not deny it. This would have lead to cross examination based on the inconsistency and would have not lead to a reasonable probability the jury would believe the recantation over the original, pre-privilege testimony. (p.9)

Second, Trumbull's statement would not be reliable either as an inconsistent statement because he was under heavy narcotics use when he said it. If the statement had come in, the prosecution would have pointed to the EMT's use of "heavy narcotics" (p.8) while Trumbull made the statements. he could have easily mistaken who owed the money to whom while discussing it with The EMTS. This again, would not lead a reasonable probability that Trumbull was biased against the Defendant and make his testimony unbelievable enough to lead to an acquittal. Plus, the defense cross-examined Trumbull's credibility while on the stand by bringing in a prior conviction for a fraud crime. The jury still believed his testimony despite this. This should lead the court to conclude that there is no reasonable probability that the result would change if the previous statement were admitted.

When taking both of these statements into account and cumulatively, there is not a "paucity" of evidence surrounding the statements and testimony that supported the conviction like in Haddon. In Haddon, there was only one eyewitness and, essentially, no other evidence supporting the conviction. Therefore, when the statement was given, it discredited the only piece of evidence. Here, there is a living victim, unlike Haddon, who can ID the perpetrator, along with a girlfriend who identified Hale immediately after as the shooter. Both have explanations for their prior inconsistent statements unlike the statements considered in Haddon. Therefore, the Court should find that the exclusion did not materially prejudice the defendant.

III. The Defense Could Have Found the Evidence of The EMT Statement through Due

Diligence

Lastly, the Court should recognize the due diligence exception mentioned in State v. Capp. While not "essential to the case",The Capp court stated that "the prosecution is not required to furnish a Defendant with Brady material if that material is fully available to the defense through the exercise of due diligence." The Defense attorney had an opportunity to seek out the testimony of the EMT operators who took Trumbull in to the hospital.
Because the defense and prosecution had equal opportunity to subpoena the EMT witnesses, then the court should excuse The non-disclosure.

IV. The Police Officer's Report on Recantation Was Not In the Possession of the State

The officer in this case testified that he turned over the file to another governmental actor that he could not recall when he finished recording the recantation statement. Franklin Law says that "if the evidence was with a government agency not involved in the investigation or prosecution of the defendant, its records are not subject to disclosure under Brady." Capp. The investigating officer testified that he did not have the report because he turned it over before going on medical leave. This document could have been in the possession of any other governmental agency not involved in the investigation. We know this because the prosecution asked the police force to turn over the entire file, which they stated they did. This means the file could have been in another government agency not involved, such as the clerk's office. The defense did not prove the statement was in the possession of the prosecution and therefore the court should deny the motion .

Second, the EMT evidence was not in the prosecution's possession because the EMT is not an investigatory part of the government. Capp held that when information that is not disclosed is held by a non-investigatory part of the government, the prosecution is under no duty to disclose the information. Furthermore, the defense had an opportunity to go an subpoena the EMT's based on their testimony that they would have told the defense the information they needed if they had simply asked for their deposition or some other form of evidence. (p.10).

Therefore, both statements were not within the possession of the government and the prosecution was not under a Brady obligation to turn them over.

Conclusion: This Court should deny defendant's motion for new trial based on the above reasons.

MPT 2 - Sample Answer # 1

Art. IV s 1:

Language: The government of the Association shall be vested in, and its affairs shall be managed by, a Board of Directors, consisting of 16 directors, who shall represent each class of members as follows: 1 representative of each 8 teams selected by the owner of

each team ("team directors"), and 1 representative of each 8 team's players selected to be each team's liaison to the players' union ("player directors"). If a team is added to the League, 1 new team director and 1 new player director will be added to the Board of Directors to represent that team and its players. If a team is removed from the League, that Board of Directors will lose that team's team director and player director.

Explanation: At a minimum, the Board of Directors (BoD) needs at least 3 directors (see Walker's Treatise on Corporations and Other Business Entities s. 10.4), so my recommendation complies with this basic requirement. I also suggest an even number of directors, despite the potential downside. Fischer and Peters repeatedly stressed in their meeting that they wanted equal representation on The BoD. While Peters raised the possibility of an independent, non-voting chair of The BoD, and this could prevent deadlock caused by an even split of team and player directors, Fischer was opposed to this idea. Furthermore, a core concern of both parties is equal control between the two sides. Having an independent 17th director could lead to one side having more or less of an advantage, depending on that director's viewpoints. Overall, I suggest equality is too important to the parties to allow for a 17th director. Even numbers could also be an advantage; when there are different classes of directors, equal numbers of each class "may encourage cooperation among the various classes" (see Walker's s. 10.4)

Because Fischer and Peters indicated that they hope the league will expand in size, I recommend clarifying in the Articles of Incorporation that as the number of teams increases, the size of the BoD will increase accordingly. I also recommend providing for the unlikely event that the league loses a team, because rugby is still a relatively unknown sport and these Articles should be designed to survive the League's ups and downs.

Art. IV s 5:

Language: When a vacancy arises due to a team director's departure from the Board of Directors, the owner of that team shall name a new team director to fill the vacancy. When a vacancy arises due to a player director's departure from the Board of Directors, the vacancy shall be filled by the new players' union liaison for that team.

Explanation: Under Franklin law, the Articles of Association may specify a method for the filling of vacancies on The BoD (see Walker's s.10.8). The suggested language above is based on the parties' explanation for how they want vacancies filled, and you may wish to tweak it after further discussions with the parties to ensure that this method of filling vacancies is feasible.

Art. IV s 6(b):

Language: A quorum of 10 directors, consisting of at least 5 team directors and at least 5 player directors, must be present in order to conduct any Association business.

Explanation: Franklin law requires, at a minimum, a quorum of a majority of board members to take any action (see Walker's s. 10.9). When there are different classes of directors, a minimum number of each class directors may be required to reach a quorum (see id.). It

is of utmost importance to the clients that each side be prevented from taking unilateral action. In the interest of maintaining fairness and trust to the extent possible between the two sides, I recommend a slightly higher quorum requirement than the law requires, such that there is a majority of each class of director present at each meeting and able to give input and vote on all issues.

Art. IV s 6(c):

Language: For matters of great importance, including hiring key employees or altering the apportionment and distribution of revenues, a super majority (2/3) of all directors present and voting must vote in favor of the action, and in addition, a super majority (2/3) of the directors present and voting from each class of directors must vote in favor of the action. For all other matters, a simple majority of those present and voting must vote in favor of the action, and in addition, a simple majority of the directors present and voting from each class of directors must vote in favor of the action.

Explanation: It is important to specify that the number of votes required to pass an action should be based on the number of directors present and voting, as opposed to the number of votes relative to the number of directors attending for purposes of achieving a quorum. This is because under Franklin law, "once a quorum . . . is present for a board meeting, it continues to exist for the duration of the meeting" (see Schraeder v. Recording Arts Guild par. 7, Franklin Court of Appeal (1999)). The Articles of Association may require a super majority of those present and voting or even unanimity among those present and voting in order pass matters of great importance (see Walker's s. 10.9). This type of requirement can act as a safeguard against one class of directors acting unilaterally (Schraeder par. 2-3). Because the two sides are so concerned about limiting each other's power to act unilaterally and want to ensure that revenue-splitting may not be changed by a simple majority, I recommend requiring a super majority of each class of members present and voting in order to make major decisions. Furthermore, while often a mere simple majority of those present and voting would be required to pass routine matters, because the parties are so deeply concerned about fairness between the two classes of directors, I suggest that a majority of votes in each class favor any action before it is passed. This suggestion could make passage of routine matters too cumbersome to be workable, so I recommend that you discuss it with the two sides to see if they would instead be comfortable with requiring merely a simple majority of those present and voting to pass routine matters.

Art. V:

Language: The Chair shall rotate among directors, alternating every other meeting between a team director and a player director. When the Chair duties fall to the team directors, the Chair position shall rotate on a set schedule between all team directors so that all team directors chair one meeting before any team director chairs a second meeting. The same shall apply to player directors.

Explanation: Because I recommend rejecting the idea of a disinterested 17th director to serve as Chair, as stated above, I recommend that the Association rotate between team directors and player directors as meeting Chair for each meeting, as suggested by Fischer

(see also Walker's s. 10.10). In order to avoid one director exerting an unfair amount of influence over the board, I recommend rotating between each team's directors and each player's directors on a set schedule, such that all directors serve as Chair on an equal, rotating basis.

Art. VII:

Language: All Association costs will be covered by income it receives for its activities. After all costs have been paid, any remaining revenue will be split evenly and distributed on an annual basis at the end of the fiscal year, with 50% going to the Rugby League of America and 50% going to the Professional Rugby Players Association.

Explanation: This language reflects the clients' stated desire to first pay all Association expenses from revenue and then split any remaining revenue between the two sides 50-50.

Art. VIII:

Language: These Articles may be amended by a super majority (2/3) of all directors present and voting, and in addition, a super majority (2/3) of the directors present and voting from each class of directors.

Explanation: As explained above, on matters of great importance a super majority of all members present and voting as well as all members from each class present and voting may be required in order to move forward (see Walker's s. 10.9). The parties expressed a desire for such an arrangement in order to avoid unilateral action by one side or the other; they also made clear that unanimity should not be required because they do not want any one director to have veto power.

Therefore, I recommend that amending the Articles require the same super majority (overall and within each class) as all other matters of great importance.

MPT 2 - Sample Answer # 2

ARTICLES OF ASSOCIATION OF THE
RUGBY OWNERS & PLAYERS ASSOCIATION

ARTICLE IV --- BOARD OF DIRECTORS

Language: SECTION 1. GOVERNMENT. The government of the Association shall be vested in, and its affairs shall be managed by, a Board of Directors, consisting of sixteen directors, who shall represent each class of members as follows:

a. The Board of Directors shall consist of two classes of eight members each.

b. One class of directors shall include eight members to represent the owners of the teams of the Rugby League of America, and the other class shall include eight members to represent the roster of players of the teams of the Rugby League of America.

Explanation: As set forth by both parties during the client interview, neither side fully trusts the other. Both sides stressed the importance of structuring the board so that neither side would have an advantage over the other, meaning that the players and owners should have equal board seats. Requiring unanimity would enable one side to easily veto any measure. Ensuring an equal number of directors will provide adequate protections.

Walker's Treatise on Corporations and Other Business Entities notes that while Franklin law requires a minimum of three directors and that boards usually contain an odd number of directors, if more than one class of members is represented on a board, the board may consist of an even number of members from each class. This could lead to a potential deadlock; however, it could also encourage cooperation among the classes. I believe providing for an even number of directors would best achieve the goals of each side. By providing for an even number of directors to represent each side, neither side will have an advantage over the other, in accordance with the parties wishes. While there may be a possibility of deadlock, this would likely only occur on very contentious issues and would therefore encourage compromise on such matters. The parties have explained that they have a shared interest in many areas, so as a result, compromise is likely.

Language: SECTION 5. VACANCY IN BOARD OF DIRECTORS. In the event of a vacancy on the Board of Directors, such vacancies shall be filled as follows:

a. If a vacancy occurs within the class of directors representing the owners of the teams, the replacement director shall be elected by the owner of the team which the director is to represent. Such election shall be accomplished in the same manner as that set forth in Article IV, Section 3 above.

b. If a vacancy occurs within the class of directors representing the roster of players of the teams, the replacement director shall be the team's replacement players' representative to the Professional Rugby Players Association. Such election shall be accomplished in the same manner as that set forth in Article IV, Section 3 above.

Explanation: Walker's allows for vacancies to be filled in a number of ways, such as by specifying an alternative method in the Articles. This can include allowing each class of members or directors to fill vacancies in their respective class.

Given the relationship between the two classes, I believe requiring vacancies to be filled in the same manner as general board elections would protect the interests of both sides. If the board were allowed to vote to replace its own members, one class of directors would conceivably be given the power to select the replacement directors to represent the other side.

Language: SECTION 6. MEETINGS OF THE BOARD.

a. [Provided]

b. Quorum: A quorum shall consist of a simple majority of nine directors, subject to the requirements of subsection © below.

c. Voting: At least three directors representing each class must be present for to constitute a quorum. A majority of directors present and voting from each class must vote in favor of any proposed resolution for it to be adopted.

Explanation: Franklin law requires that a quorum consisting of a majority of directors be present to conduct business. In Schraeder v. Recording Arts Guild, the articles of association required that two members of each class be present for a quorum in order to ensure that both sides are represented in a quorum. In order to strengthen that requirement, I would increase that number to three and require that a majority of the members of each class vote in favor of a resolution. This would further protect both sides from action by the other side if the other side had a larger number of members present at a meeting.

ARTICLE V --- OFFICERS

Language: The Chair shall serve for a term of one year and shall be an existing director. The Chair for the first year shall be elected by a majority of the directors representing the owners' class of members. The Chair for the second year shall be elected by a majority of the directors representing the players' class of members. Election of the Chair shall rotate between classes from year to year.

Explanation: Both sides clearly disfavored the idea of an independent director; therefore, the chair should be appointed from within the association. Allowing the election of the chair to rotate between classes from year to year would ensure fairness and equal long term representation.

ARTICLE VII --- APPORTIONMENT & DISTRIBUTION OF REVENUES

Language: After all administrative and operating expenses are deducted, all remaining revenues shall be divided evenly, with one half to be paid to the Rugby League of America and one half to be paid to the Professional Rugby Players Association.

Explanation: Both parties wished that all remaining revenues be split evenly and paid to the two parties
to use as they see fit.

ARTICLE VIII --- AMENDMENT OF ARTICLES

Language: These Articles may be amended by a two-thirds majority of the Board of Directors.

Explanation: This provision provides substantial protection to both sides, preventing either from changing the articles in their favor. This provision is also allowed under Franklin law

MPT 2 - Sample Answer # 3

Article IV--Board of Directors

Section 1. Government. The government of the Association shall be vested in, and its affairs shall be managed by, a Board of Directors, consisting of sixteen, who shall represent each class of members as follows:

Eight of the board members will represent the owners and eight of the board members will represent the players. Each team's union representative will sit on the Board as that team's players' representative. Each team's owner shall name its board member.

Explanation: As set forth in the client interview, the two entities seek the same number of seats on the board and seek equality in the decision-making process. Though deadlock might result from an equal number of board members, an equal number also may encourage cooperation between the classes.

Section 5. Vacancy in Board of Directors.

A vacancy of an owner director shall be filled by the team's owner. A vacancy of a player director shall be filled by the players of the team whose director has been removed. Vacancies shall be filled within 45 days of their occurrence.

Explanation: Walker's Treatise suggests a variety of ways vacancies can be filled, such as members filling vacancies. Owners filling their respective vacant seats and players filling their respective seats is consistent with the position of the parties in the client interview.

Section 6. Meetings of the Board.

b. Quorum:

A quorum of 6 directors from each of the classes shall be required from each side.

Explanation: Franklin law provides that a present quorum exists for the duration of the board meeting. A quorum requirement of equal owner and player directors effectively prevents either side from gaining an advantage should the other side not be present to vote. Furthermore, requiring a quorum of 6 directors prevents a large walk-out of directors leading to a small number of directors on either side from preventing an otherwise good action of the Association from being implemented.

c. Voting:

Any action of the Board requires the consent of a majority of directors from each side once a quorum is present.

Explanation: Requiring a majority of directors from each side fosters the kind of good-will and agreement each side seeks in the Association. This equal voting power is consistent with the overall equality this Association seeks, as evidenced by the equal share of revenue.

Article V--Officers

The Board of Directors shall appoint the following officers: a Chair, a Secretary, and a Treasurer. The Chair shall be chosen by the other side every second year. The Chair shall first be chosen by the owner directors.

Explanation: If the CEO is to be entirely neutral, as suggested in the meeting, he or she cannot be an independent director, as both sides agree upon. A rotating Chair fosters consensus. The Chair first being chosen by the owner's directors is to ameliorate the burden of the considerable start-up expenses they bear.

Article VII--Apportionment & Distribution of Revenues

Revenues earned by the Association, after deduction of expenses and reserves, shall be distributed to the directors of the separate classes of members for further distribution.

Explanation: Both parties seek a 50-50 distribution of revenue earned. Article VIII--Amendment of Articles

Amendment of the Articles shall be passed by a super majority of two-thirds of the entire board.

Explanation: The requirement of a two-thirds super majority protects The equally divided revenue apportionment the parties seek. Furthermore, it protects all other major decisions from being changed without significant support.